

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 382 of 1997
with
CIVIL APPLICATION NO. 10849 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BOARD OF TRUSTEES OF THE PORT OF KANDLA

Versus

ARVIND V JOSHI & CO.

Appearance:

MR SR BRAHMBHATT for Petitioner

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 22/04/98

ORAL JUDGEMENT

Heard the learned Counsel for the appellant. The respondent, inspite of having been served and put in appearance, Mr.A.K.Clerk, learned Counsel has filed an application stating that he has not received any instructions inspite of his best efforts and he pleads that permission may be given to him to withdraw from the

conduct of the case. In the circumstances, the appeal is heard ex-parte.

The plaintiff has filed a suit of permanent injunction for restraining the defendant from discontinuing the necessary facilities provided at the Port to the plaintiff who is rendering services of loading and unloading and clearing agent of Cargoes. It is the case of the plaintiff that the plaintiff has received a notice from the defendant that due to its negligence in discharging the cargo handling services, the damage has been caused to the Port area and unless the estimated damage of Rs.9,14,775/- is paid, the services extended to the plaintiff will be suspended. The trial Court, on finding a prima facie case, in favour of the plaintiff, has granted temporary injunction restraining the defendant, its officers, and persons from discontinuing all the services or facilities provided as shipping, clearing, and forwarding agent on payment of necessary charges till the final disposal of the suit.

After hearing the learned Counsel for the appellant, it appears that, while granting the temporary injunction, the trial Court has not taken into consideration the claim of the defendant raised against the plaintiff and by granting unconditional interim order in favour of the plaintiff, it has tilted the balance in favour of the plaintiff without safeguarding the defendant's interest in the suit. In my opinion, the order ought to have been conditional subject to safeguarding the defendant's interest in the matter of damages claimed. The order, therefore, needs to be modified accordingly.

The appeal is partly allowed. The interim order passed by the trial Court is modified to the extent that the same may be subject to the condition that the plaintiff deposits in the trial Court sum of the disputed demand or furnish Bank Guarantee in favour of the defendant, within three weeks from today, failing which, the interim order shall stand vacated. In case any further damage is alleged to be caused to the Port on account of the negligent handling by the plaintiff, the defendant will be at liberty to apply for vacating the interim order before the trial Court. The appeal is allowed to the aforesaid extent only. There shall be no order as to costs.

In view of the above order, no orders are required to be passed in the Civil Application.

sreeram.